



Mendocino Group, Redwood Chapter P.O.Box 2330 Fort Bragg 95437-2330

8 May 2006

State Water Resources Control Board  
P. O. Box 100  
Sacramento, CA 95812-0100

Re: Comment Letter-Sediment and Temperature TMDL Scott River  
Watershed Follow-up on Instream Flows

Dear Board Members:

I would like to thank the board for their careful preparation and questioning of the issues at the hearing on April 18<sup>th</sup>. At that time regional staff acknowledged that shade was the only source of remediation for temperature impairment covered in the action plans. It was also acknowledged that full canopy improvement alone could not fully address the problem. We appreciate the opportunity provided to comment further on this issue and the necessity to improve instream flows to address high water temperatures.

#### SURFACE WATER/GROUND WATER

The language proposed by the regional staff in their July 2005 draft for implementation actions requested that the State Water Resources Control Board (SWRCB) "study the connection between ground water and surface water" and to "take the findings...into consideration and act accordingly to protect instream beneficial uses." We support the language's intention of having SWRCB take a significant role in this effort, but would prefer to see the issues of surface water separated from ground water. Identifying and addressing ground water can be a very long term project much like working

with shade improvement. Also, while surface water is within the complete regulatory jurisdiction of the state, ground water is not. Addressing them separately would allow a much faster response in that there are a number of specific actions independent of ground water's influence that could be implemented without extensive study exercising existing regulatory authority.

The regional staff's July language can be modified as shown below and restored to the Basin Plan Amendment to allow the original intention of involving the SWRCB in responding to the instream flow issue but separating the surface water ground water elements.

July 2005 Draft page 14 Water Use with our proposed revision:

*The Regional Water Board requests the State Water Board and its Division of Water Rights study ~~the connection between groundwater and surface water, the impacts of ground water and surface water diversions use on beneficial uses, and the impacts of groundwater levels~~ on the health of riparian vegetation and aquatic life in the Scott River watershed. The Regional Water Board further requests the State Water Board and its Division of Water Rights take their findings ~~of the above study~~ into consideration and act accordingly to protect and restore the instream beneficial uses of the Scott River and its tributaries, with particular focus on those beneficial uses associated with the cold water fishery.*

*The Regional Water Board also requests the State Water Board conduct a study in cooperation with local agencies of ground water use and its impacts on beneficial uses.*

We believe that this broad language, much like that originally proposed by the regional staff, would satisfy the requirements of the Basin Plan Amendment. Specific activities of the Division of Water Rights to meet the objective above can be initiated under present authority are suggested as follows.

## SUGGESTED SPECIFIC RESPONSES FOR SWRCB/DWR

### 1. Re-examination of existing Water Rights for Compliance

The Trout Unlimited/Audubon petition presents a clear statement of the responsibility and authority for the SWRCB to re-examine existing water rights for adherence to the terms regarding by-pass conditions and compliance with Statements of Use. (TU/AU Petition p24) Review and correct any non-compliance.

### 2. Review the Terms of the Adjudication for Compliance

Review the record for compliance with the terms of the adjudication for diversion and bypass requirements. It is our understanding that adjudicated by-pass requirements are not being met. DWR should review and correct any non-compliance.

### 3. Un-permitted Diversions

Surveys of the Russian and Navarro River watersheds have, in both cases, disclosed more un-permitted diversions than permitted diversions. The continued decline of summer flows since the adjudication indicates that same pattern on the Scott. The watershed should be surveyed for un-permitted diversions or impoundments and correct them.

### 4. Establish Minimum Instream Flows

Using *Guidelines for Maintaining Instream Flows to Protect Fisheries* by the Department of Fish and Game and the National Marine Fisheries Service prepare and adopt minimum instream flow conditions that will protect the fisheries.

### 5. Reopen the Adjudication

To the extent the resulting permitted diversions and public trust instream water rights exceed the rivers available capacity the adjudication should be reopened. The DWR would reallocate water rights as necessary giving recognition of the rights under the federal Clean Water Act for the beneficial use of the fisheries.

### 6. Gauges

DWR must assure that the watershed has continuously recording gauges sufficient to document all necessary flow data

## 7. Personnel

We recognize these actions may require personnel beyond the current staffing. We don't however accept that as a limitation on the board's responsibility, but see it as justification for your requesting the necessary resources from the legislature and governor.

The solution to temperature impaired rivers like the Scott could be greatly facilitated by the involvement of DWR in the process *at the beginning*, working with the regional staff to determine if the absence of adequate instream flows are a factor in the temperature impairment. Such a finding by DWR would do much to shift the debate from an emotional political one to a rational technical examination of the facts and appropriate application of the law. The result would be more powerful implementation plans and a much faster recovery of the temperature impaired rivers.

Very truly yours,

Daniel Myers  
For the Mendocino Group of the Sierra Club

## Attachments

CC: North Coast Regional Water Quality Control Board  
Catherine Kuhlman  
Alan Levine  
Brian Johnson  
Tim McKay  
Felice Pace  
Paul Mason  
Jim Metopulos